

November 20, 2015

The Honorable Jeh Johnson
Secretary
Homeland Security
Washington, DC 20016

Dear Secretary Johnson:

As we mark the one year anniversary of the Administration's executive action on immigration, Asian Americans Advancing Justice-AAJC, Asian Americans Advancing Justice-Los Angeles and more than 50 undersigned Asian American and Pacific Islander (AAPI) organizations write to offer our assessment of executive action's impact on the AAPI community.

Immigration is particularly relevant to Asian Americans and Pacific Islanders considering that the aggregate AAPI population includes the highest proportion of immigrants compared with other racial and ethnic groups. The overwhelming majority of Asian Americans are immigrants or the children of immigrants. Since 2008, there have been more immigrants coming from Asia than from any other region in the world, including Latin America.¹ Our community members come to the United States in various ways – as students, family members, workers, or refugees and asylees. Dating back to exclusionary immigration laws of the late 1800s, the AAPI community has been and continues to be uniquely shaped by U.S. immigration laws. The Department of Homeland Security (DHS) estimates that 1.3 million Asian Americans are undocumented, meaning that Asian Americans account for approximately one in every nine of the total unauthorized immigrant population in the United States.² Additionally, more than 1.8 million of the over 4 million family members and potential employees waiting in the visa backlogs are Asian nationals.

Our community, especially many of our younger leaders who are undocumented, worked tirelessly alongside others to move President Obama and his Administration to take bold action to help immigrants and their families. We welcomed many of the actions announced in November 2014, but we were also deeply disappointed by some of the policy changes. Nevertheless, we are committed to the successful implementation of key elements of these executive actions. In that spirit, we provide the following specific recommendations to improve executive action for the benefit of individual immigrants, our communities, and America overall.

Prosecutorial Discretion

On November 20, 2014, DHS issued a series of memoranda outlining administrative fixes to our nation's broken immigration system. Among these memoranda was one titled *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, which outlined DHS's

¹ AAPI Data, <http://aapidata.com/graphic-recent-migration/>.

² *Id.*

new civil enforcement priorities for the removal of undocumented immigrants.³ The memorandum incorporated a three-tiered system of enforcement priorities, each of which contained a prosecutorial discretion exception for U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) to apply.⁴

Unfortunately, community members, advocates, and media reports indicate that ICE has not been consistently following these enforcement priorities and, in some cases, has even targeted individuals who fall outside the enforcement priorities.⁵ Contrary to the terms of the DHS memorandum, ICE seems to consider all priority categories equally and targets individuals based on the mere fact that they fall within any priority—including the less serious criminal categories of misdemeanants and immigration violators.⁶ Individuals, including many in the Southeast Asian and Chinese American community, who may fit a priority category but have strong equities in their favor have had very little success obtaining a favorable exercise of discretion. Furthermore, under the revised enforcement priorities, those who entered illegally prior to January 1, 2014, who never disobeyed a prior order of removal, and were never convicted of a serious offense, would presumably not be targeted for deportation. Despite this guidance, however, DHS continues to deport people who fall into this and other deprioritized groups, effectively dishonoring and convoluting the guidance that immigrant communities would otherwise trust and rely on.

To ensure meaningful implementation of the spirit and intent of the priorities memo, we have the following specific recommendations:

- ICE leadership must take swift and sustained action to ensure that the priorities memo is being utilized consistently across all ICE field offices.
- DHS should revisit its criminal ineligibility criteria for the enforcement priorities (as well as for the Deferred Action for Childhood Arrivals and Parents of American citizens and legal permanent residents programs) and promulgate criteria that reflects the criminalization of communities of color by reducing or eliminating the significant misdemeanor bars.
- ICE should commit to tracking and publicly releasing in a timely manner data concerning the use of prosecutorial discretion, including, but not limited, to (1) the number of requests for discretion received, (2) the number of requests granted and denied, and (3) the number of initial denials subsequently reversed by any ICE officials.

³ Memorandum from Jeh Johnson, Secretary, U.S. Department of Homeland Security, on Policies for the Apprehension, Detention and Removal of Undocumented Immigrants to Thomas S. Winkowski et. al (Nov. 20, 2014), available at: http://www.dhs.gov/sites/default/files/publications/141120_memo_prosecutorial_discretion.pdf [hereinafter “Enforcement Priorities Memorandum”].

⁴ *Id.*

⁵ See Carolina Canizales and Paromita Shah, *Prosecutorial Discretion Denied*, United We Dream and National Immigration Project of the National Lawyers Guild, April 2015. Available at: <http://unitedwedream.org/wp-content/uploads/2015/04/PDDenied.compressed.pdf>. Hereinafter “Enforcement Priorities Memorandum.”

⁶ Enforcement Priorities Memorandum, *supra* note 5.

Priority Enforcement Program

2014's executive action also marked a shift in DHS's approach to information sharing between local law enforcement and federal immigration authorities. The new Priority Enforcement Program ("PEP") purports to replace the Secure Communities program with a similar policy that presumably "supports community policing and sustains the trust of all elements of the community in working with local law enforcement."⁷ Despite these stated intentions, however, PEP is still a fundamentally flawed program with many of the same problems as Secure Communities. DHS's endorsement of information sharing and cooperation between ICE and local police instills fear of law enforcement among immigrant communities, effectively discouraging community policing because of the risk of immigration consequences.

The PEP memo still authorizes the use of ICE detainers, the infamous "ICE holds," albeit in more limited circumstances than under Secure Communities. DHS promotes PEP as representing a change from Secure Communities in that it replaces requests for detention with a new model where ICE requests notifications of a pending release of a person in criminal custody. This subtle distinction mitigates some of the risk of Fourth Amendment violations, as several state and federal courts held that ICE detainers amounted to unlawful detention. However, requests from ICE to share information about individuals in criminal custody still leaves broad possibility for discretion, both from ICE and from local law enforcement, to decide which detainees should be flagged for ICE action and which ones should not.

Under the guidelines of DHS's enforcement priorities memorandum, the new PEP policy places top priority on national security threats, convicted felons, gang members, and illegal entrants apprehended at the border; the second-tier priority on those convicted of significant or multiple misdemeanors and those who are not apprehended at the border, but who entered or reentered this country unlawfully after January 1, 2014; and the third priority on those who are non-criminals but who have failed to abide by a final order of removal issued on or after January 1, 2014.⁸

While PEP relies primarily on ICE to make notification requests only for a more limited group of immigrants, and ICE detainers in even more limited circumstances, the reinstatement of data sharing between local police and ICE invites racial and other profiling for all individuals in criminal custody, and will inevitably funnel more people through ICE's deportation pipeline. Further, the PEP memo permits local jurisdictions to voluntarily transfer to ICE an immigrant deemed a priority under DHS's new enforcement priorities even if the individual is not a priority for PEP purposes. Again, this leaves too much room for local authorities to profile individuals and otherwise undermine civil rights.

This myopic approach to deporting "felons, not families," ignores the fact that the individuals who are subject to PEP's priorities play irreplaceable roles within their own families and communities, and it is impossible to decouple this population from the rest of the immigrant

⁷ Memorandum from Jeh Johnson, Secretary, U.S. Department of Homeland Security, on Secure Communities to Thomas S. Winkowski et. al (Nov. 20, 2014), available at: http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities_0.pdf

⁸ *Id.*: See also *supra* note 5, Enforcement Priorities Memorandum.

community. At a time when President Obama and his Administration are actively pursuing criminal justice reforms to roll back policies that have damaged communities - especially communities of color - PEP's purpose is misguided and harmful.

In the midst of this realignment of DHS's approach to information sharing to capture immigrants with criminal convictions, ICE has not been very transparent during PEP's implementation. There is no public list of which jurisdictions are participating in PEP. And DHS still has not provided similar levels of guidance regarding waivers or relief for individuals who are flagged as an enforcement priority. While the law allows for waivers or prosecutorial discretion for certain individuals with criminal issues or unlawful presence, the standard is uncertain and discretionary, leaving immigrant communities unable to determine who may or may not qualify.

We call upon DHS to immediately suspend the Priority Enforcement Program nationwide. Until PEP is terminated, we ask DHS to take all actions necessary to ensure that profiling on the basis of race, ethnicity, national origin and/or religion by either ICE or local law enforcement personnel does not occur as a result of PEP – and ICE should not proceed with enforcement actions against any individuals who have been identified and/or detained as the result of any profiling. Last, ICE must commit to greater transparency about PEP, including, but not limited to:

- Releasing the names of all local jurisdictions participating in PEP;
- Tracking and publicly releasing data on:
 - The number of requests for notification and detainers issued;
 - The bases for notification and detainer requests based on ICE's prioritization categories (broken down by categories on the I-247D and I-247N forms);
 - The number of requests for notification and detainers (1) responded to and (2) denied; and
 - The countries of origin for individuals subject to notification and/or detainer requests.
- Engaging in regular stakeholder meetings with advocates to report on PEP implementation and progress.

Deferred Action

Since its announcement on June 15, 2012 Deferred Action for Childhood Arrivals (DACA) has been a groundbreaking program for young immigrants, granting temporary relief for undocumented youth through a postponement of deportation and the grant of a renewable work authorization. The program has opened up innumerable opportunities for formerly undocumented individuals who grew up in the United States, allowing for access to education, healthcare, employment, and dozens of other avenues that remain closed to the rest of the undocumented population.

However, some aspects of the DACA program can still be improved. Many DACA recipients have encountered difficulties with advance parole.⁹ In particular, the notices granting advance

⁹ Despite issues with advance parole for DACA recipients, we applaud the Department's recognition of the precedent decision *Matter of Arrabally*, holding that individuals who travel abroad after a grant of advance parole do not make a "departure" from the U.S. for immigration purposes. See memorandum from Jeh Johnson, Secretary,

parole are difficult to understand and frequently lead to confusion about when a DACA recipient is authorized to travel abroad, which can later lead to problems when applicants try to renew their DACA status. U.S. Citizenship and Immigration Services (USCIS) should revise advance parole notices to make them easier to read and understand. USCIS should also provide additional guidance in the DACA FAQs to provide greater clarity on the advance parole process. Greater clarity will help DACA recipients and USCIS, which will have to use fewer resources to address advance parole-related problems in the renewal process.

Also, while DACA offers refuge from the fear of deportations and opens up employment possibilities for many, the makeshift measure remains inadequate. Ultimately, the program only applies to a selective group of undocumented youth who can meet the age, residency, and educational requirements. The exclusion of similarly situated populations like newer immigrant youth and certain undocumented family members reflects the greater failure of the program to address the realities of the undocumented community.

DHS's efforts to expand the deferred action program would have been an improvement to DACA, encompassing a broader swath of undocumented youth, as well as a new population of undocumented immigrants with children who are United States citizens or permanent residents. The AAPI community applauded the expansion of deferred action and nearly 400,000 AAPIs stand to benefit from this change. We have worked hard to defend these programs and many of our organizations joined *amicus* briefs supporting DAPA and expanded DACA. We are deeply disappointed they are on hold in the courts but we are pleased the Administration is committed to seeking relief in the United States Supreme Court. In light of the prolonged delay because of ongoing litigation, we strongly urge DHS to use its discretionary authority to the fullest extent possible to make sure that all undocumented immigrants who are low enforcement priorities be granted deferred action.

Parole for Family Members of Filipino Veterans

The AAPI community applauds the Administration for taking much-needed action to help reunite Filipino World War II veterans with certain family members. Community members have been waiting anxiously for more detailed information since the June 2015 announcement that DHS would create a parole program for this population. Community leaders provided written recommendations to the Administration to help ensure the parole program helps as many veterans and their families as possible; we also met with staff for the White House, USCIS and Department of State to discuss the new program. We appreciate the Administration's engagement with community leaders. We ask that the program be implemented as quickly as possible with the broadest parameters. Sadly, many Filipino veterans have already passed away and every single day matters to these veterans and their families, many of whom have already waited more than twenty years to be reunited. The June 2015 announcement was a key step toward honoring these veterans but now the Administration must act quickly to make good on its promise.

U.S. Department of Homeland Security, *Directive to Provide Consistency Regarding Advance Parole*, to Thomas S. Winkowski et. al (Nov. 20, 2014), available at: http://www.dhs.gov/sites/default/files/publications/14_1120_memo_arrabally.pdf

Eliminating Naturalization Barriers

The AAPI community is excited that the Administration is redoubling its efforts to promote citizenship and encourage eligible individuals to naturalize. More than 1.2 million AAPIs are eligible to naturalize and our leaders are committed to making it easier for eligible individuals to become citizens. As with other communities, the current naturalization fee of \$680, that may be in addition to costs for legal assistance and/or English or civics classes, is a significant barrier that prevents many AAPIs from starting the naturalization process. For example, the Vietnamese American community has one of the largest numbers of individuals eligible to naturalize but they also have a significant number of community members living in poverty (approximately 14%). DHS has acknowledged that the existing fee waiver, which applies only to those living below 150% of the federal poverty guidelines, leaves out millions of individuals eligible to naturalize but who cannot afford the high fees.

We understand USCIS is now in the process of evaluating its fees, as well as evaluating the feasibility of a partial fee waiver for naturalization applicants. We strongly urge USCIS to do everything it can to make naturalization more affordable and accessible, including lowering the naturalization fee and creating a partial fee waiver.

To further encourage eligible individuals to apply, we also recommend that USCIS reduce the length of the N-400 and fee waiver forms. Longer forms may discourage individuals from applying and it also places greater burdens on non-profit organizations like ours that struggle to provide quality application assistance to as many community members as possible.

And finally, while we applaud USCIS' effort to make citizenship more accessible, we encourage them to be more visible to the community and to put more resources into their naturalization campaign. Even as USCIS is promoting naturalization, they have not been referring applicants to pro bono or low cost organizations to help them become citizens. We believe that USCIS should be able to connect applicants to qualified nonprofit organizations, and we encourage USCIS to continue developing relationships with recognized legal service providers to increase the visibility, urgency, and importance of naturalization.

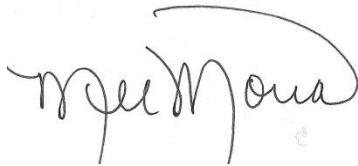
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America's immigration policies and practices impact Asian American and Pacific Islander communities every single day. One year ago, President Obama and his Administration took critical steps toward improving the lives of immigrants and their families. We stand ready to work with you to ensure that the President's legacy is one of honoring the dignity and humanity of every immigrant in this country.

Thank you for considering the recommendations included herein. If you or your staff have

questions, please contact Erin Oshiro at Asian Americans Advancing Justice-AAJC (eoshiro@advancingjustice-aajc.org) or Martha Ruch at Asian Americans Advancing Justice-Los Angeles (mruch@advancingjustice-la.org).

Sincerely,



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Stewart Kwoh
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18MillionRising.org
AAPI Christians for Social Justice
Adhikaar for Human Rights and Social Justice
Alliance of Filipinos for Immigrant Rights and Empowerment
American Citizens for Justice/Asian American Center for Justice (ACJ/AACJ)
APALA
APIAVote-Michigan
Asian American Civic Association
Asian American Federation of Florida
Asian American Organizing Project
Asian Americans Advancing Justice-Atlanta
Asian Americans Advancing Justice-Chicago
Asian Americans United
Asian Chamber of Commerce of Arizona
Asian Community Development Council (ACDC)
Asian Law Alliance
Asian Pacific American Veterans Association (APAVA)
Asian Pacific Community in Action
Asian/Pacific Islander Domestic Violence Resource Project
Asian Pacific Policy & Planning Council
Asian Services In Action
AZAPIAVOTE Table
Boat People SOS - Houston
Center for Pan Asian Community Services. Inc (CPACS)
Chinatown Community for Equitable Development
Chinese Community Center, Houston
Coalition of Asian Pacific Americans of Virginia (CAPAVA)

Daya Inc.
EMBARC
Filipino Advocates for Justice
KAYA: Filipino Americans for Progress
NANAY CEDC
NAPAFASA
National Asian American Pacific Islander Mental Health Association
National Asian Pacific American Women's Forum
National Council of Asian Pacific Americans (NCAPA)
National Federation of Filipino American Associations
National Immigration Law Center
National Korean American Service and Education Consortium
Native Hawaiian & Pacific Islander Alliance
New Mexico Asian Family Center
OCA - Asian Pacific American Advocates
OCA Greater Houston
San Francisco Veterans Equity Center
Services, Immigrant Rights, and Education Network (SIREN)
South Asian Network
Southeast Asia Resource Action Center (SEARAC)
Thai American Bar Association
Thai Community Development Center
Tongan Community Service Center

cc: Director León Rodríguez, U.S. Citizenship and Immigration Services
Director Sarah Saldaña, Immigration Customs and Enforcement
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